

1 Cost." I will tell you, Mr. Etsell, that these were
2 produced to the parties in this case, apparently as a
3 result of the documents that you provided to counsel.
4 And so, apparently, they came from your file.

5 Let me ask you, have you seen that
6 document before?

7 A Yes.

8 Q Is this the capital budget that you were
9 referring to a minute ago?

10 A Yes. It's obviously not exactly a budget.
11 It's -- it's a cost of capital to create the five
12 additional transistor sites along with microwave
13 costs.

14 Q All right. And to the best of your
15 recollection, when did you develop this budget?

16 A I -- to the best of my knowledge, it was--
17 I believe it was in the latter part of 1990, but I am
18 not certain.

19 Q All right. In any event, I assume from
20 what you've already told us that it was not later than
21 the first quarter of 1991?

22 A That would be correct.

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1 Q And I think you told us also that when the
2 transition was made in your responsibilities at the
3 end of the first quarter of 1991, you, at George
4 Gardner's instruction, transmitted this document along
5 with the charts that you referred to, to Mr. Sandifer.
6 Is that correct?

7 A To the best of my recollection, yes.

8 Q Okay. After transferring those documents
9 to Mr. Sandifer, do you recall ever getting a call
10 from Mr. Sandifer or being asked by Mr. Sandifer about
11 the budget that you developed here, or about the
12 charts, or about any other aspect of your activities
13 on behalf of the low power project?

14 A I don't remember any specific
15 conversations. It's very possible that that happened,
16 but I don't recall.

17 Q Okay. Did you transfer to Mr. Sandifer
18 any list of persons to whom you had been speaking or
19 negotiating in regard either to cable carriage or
20 programming acquisitions or anything of that nature?

21 A To the best of my recollection, Mr.
22 Sandifer was generally informed about the activities

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1 as were George Gardner and David Gardner through
2 various management meetings that George Gardner and
3 Lee Sandifer and I would have had. And I'm sure that
4 he was -- I recollect that he would have been aware of
5 my conversations with them, yes.

6 Q All right. But so far as you recall, you
7 didn't give him any lists or other documents with
8 names or summaries of discussions or things like that?

9 A Not that I recall, but these people are
10 prominent in the area and well known to most people in
11 our business in that area. It would not have been
12 necessary for -- for me to give him that information.

13 Q Okay. Now, so far as you know, apart from
14 the budget that you developed that you identified for
15 us here, are you aware of any other construction or
16 operating budget that anybody else developed with
17 respect to Raystay low power permits?

18 A No.

19 Q Insofar as you know, was any firm
20 commitment ever obtained from Cable Adnet to sell
21 advertising on the stations?

22 A Cable Adnet, and I do not remember the

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1 time frame and I believe we are speaking in the same
2 general terms. Cable Adnet already had a relationship
3 with us in selling advertising for TV 40. It would
4 have been a logical extension of that agreement to
5 move into other areas once these stations were
6 constructed. But I do not -- I'm not aware of a
7 specific contract for that purpose.

8 Q The very last notation on the Low Power
9 Business Plan -- I'm sorry. I'm switching back on
10 documents again. Let me back to this one last time
11 and then I promise you, I'm done with it.

12 On the Low Power Business Plan, the very
13 last notation on the bottom of the second page --
14 again, under the rubric of timetable -- is the
15 notation "December turn on stations." That would have
16 been December 1991.

17 A That's correct.

18 Q Is there any particular reason why that
19 time was selected as the target date for commencement
20 of on air operation?

21 A As I recall, that was the approximate time
22 when we had to have them built and ready to meet the

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1 requirements of the construction permit.

2 Q Had you ever seen the construction permits
3 yourself? Did anybody give you copies?

4 A I don't recall ever seeing them, no.

5 Q So, somebody told you? Is that your
6 recollection that somebody told you that the permits
7 expired around that time?

8 A Yes.

9 Q Who told you that?

10 A I don't recall if -- it would have most
11 likely have been George Gardner or David Gardner. I
12 -- I don't recall.

13 Q Now, during the time while you were
14 working on the -- maybe I asked you this before and if
15 I did, I apologize. During the time while you were
16 working on the low power project up through the first
17 quarter of 1991, was David Gardner actively working on
18 the project as well? If so, what was he doing?

19 A David Gardner was aware of the project
20 because he and I had discussions on it throughout for
21 a couple of reasons. Because one, David Gardner is a
22 stockholder, and secondly, he had information I needed

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1 to complete -- well, to better understand various
2 aspects of the low power station locations and
3 licensing and so on that -- in order to write the
4 documents I wrote and make the plan that I made.

5 David Gardner has the ability and knows
6 many operators. He knows the same people I know in
7 many cases, in operations and he may have had
8 discussions with other operators -- I can not say for
9 certain.

10 Q You don't know.

11 A Certainly, he's capable of doing that.

12 Q You don't recall him reporting to you that
13 he had done so, do you?

14 A I know that David would have mentioned the
15 project to anybody that he and I had discussed it --
16 I can not specifically recall a conversation that that
17 occurred, but it would be his habit to do that for me.

18 Q Can we go back to the budget for a minute?
19 This is 75601 and 02. Now, I think you testified that
20 George Gardner gave you input about the equipment
21 costs that helped you prepare these numbers. Is that
22 correct?

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1 A That's correct.

2 Q Did you obtain from equipment suppliers or
3 other sources, price quotations?

4 A No, I did not. I relied upon Mr.
5 Gardner's knowledge, having already built one station,
6 and his general knowledge of engineering.

7 Q Okay. So, would it be accurate to say
8 that the sole source of the dollar numbers that are in
9 this budget was George Gardner?

10 A Yes.

11 Q I notice that the location of the
12 transmitter sites is described at the top of each set
13 of budget numbers. Did you visit those sites prior to
14 developing this budget?

15 A No, I personally didn't.

16 Q Have you ever seen these sites? Have you
17 ever visited them?

18 A No.

19 Q Did you ever develop an operating budget,
20 as distinguished from a construction budget?

21 A Not that I recall.

22 Q Do you know whether anyone else did at

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1 Raystay?

2 A Other than to the extent that operating
3 budgets are created annually for the company, I am not
4 aware of any specific operating budget for this
5 specific project.

6 Q Okay. Are you aware of any operating
7 budget that included any allocation for this project?

8 A I was not involved in the budgeting
9 process at -- for TV 40 at the time we're speaking,
10 therefore, I can't -- I have no knowledge.

11 Q Now, did there come a time when you became
12 aware that a proposal had been received by Raystay
13 from a man named Mr. Fenstermacher, or a company
14 called Alternatives Virginia?

15 A I have heard of that individual and --
16 that -- the name is not familiar. Mr. Fenstermacher's
17 name I've heard before. The company name I'm not
18 familiar with.

19 Q Okay.

20 A I may have heard it before.

21 Q Let me ask you to turn to the next
22 document after the budget, Document 75564. It's a

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1 handwritten note dated January 23, 1991. Do you
2 recognize the handwriting on the upper half of the
3 document?

4 A Yes.

5 Q Is that George Gardner's note?

6 A It appears to be George Gardner's note,
7 yes.

8 Q Did he sometimes sign his name just with
9 the initial G?

10 A Yes.

11 Q The note says "Hal, I would like your
12 comments on this proposal from Alternatives Virginia.
13 I have attached David's comments for your
14 information."

15 Do you recall receiving with this
16 memorandum, a document that was in the nature of a
17 proposal from -- I'll call it Mr. Fenstermacher
18 because the record does establish that Mr.
19 Fenstermacher's company was Alternatives Virginia.

20 A I have a vague memory of -- of this, but
21 not -- no specific memory.

22 Q Let me ask you, do you see the handwritten

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1 note on the lower half of the page that carries a date
2 of February 4, 1991? Do you recognize the handwriting
3 on that?

4 A It appears to be -- it appears to be my
5 handwriting, or at least it looks like my handwriting.
6 And it is -- I have, again, a vague memory of having
7 some discussion with Mr. Fenstermacher. I do not
8 recall the specifics, other than what the note says
9 here.

10 Q And the note says "asked if buyer could
11 wait 60 days? He said yes." Do you have any
12 recollection of what that was about?

13 A No, I don't recall the conversation
14 specifically.

15 Q Okay. Would you turn to the next page on
16 your document compilation, page 75567? This appears
17 to be a handwritten note from you to George Gardner
18 about the Alternatives Virginia proposal. Do you
19 recognize that as your handwriting?

20 A Yes, that's my handwriting.

21 Q Do you remember writing this note?

22 A No.

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1 Q The first paragraph of the note says "I
2 have reviewed the subject proposal and find the terms
3 interesting enough to pursue, in the event we are
4 unable to develop our current plans for the six LPs.
5 One concern I have about selling only one of the five
6 CPs is that this may reduce the value of the other
7 four."

8 Let me ask you, the reference there to
9 "our current plans," what were those plans? Were
10 those the plans and the concept that you've been
11 describing to us today?

12 A I'm certain they were, yes.

13 Q And obviously, in that sentence you were
14 contemplating the possibility that Raystay might not
15 be able to develop those plans for the low powers. In
16 your mind, what did it depend on or what would it
17 depend on as to whether or not Raystay would be able
18 to develop its plan for the low powers?

19 A Well, there was a number of things
20 involved. One, one would had to have the capital
21 available to build the stations. Secondly, it was
22 important to be able to put together the programming

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1 Q Did you discuss that with George Gardner,
2 do you recall?

3 A I do not recall having a conversation with
4 him beyond this. Obviously, I --

5 Q Okay. Do you know whether he shared that
6 view? The view that if one of the permits were sold,
7 it would reduce the value of the other four?

8 A No, I don't know if he shared that or not.

9 Q Do you know whether David Gardner shared
10 that?

11 A No.

12 Q Do you know whether Mr. Sandifer shared
13 it?

14 A No.

15 Q In the last paragraph of the note you say
16 "within 60 days, I hope to have a much better idea of
17 our potential carriage by cable operators. We should
18 be in a much better position to make a decision in
19 April."

20 Did you get a better idea of Raystay's
21 potential carriage by cable operators within 60 days,
22 or within the time you were still working on that

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1 project?

2 A I really can't gauge that in terms of how
3 I felt at the time I wrote this memorandum, but I did
4 feel fairly confident that there was a good deal of
5 opportunity to go forward with cable operators on the
6 concept when I ended my relationship with the project.

7 Q You had testified that you had additional
8 discussions with cable operators after the occasion
9 when you had the meeting at Cable Adnet. And I take
10 it that those discussions necessarily occurred
11 sometime between mid-February when you wrote the
12 business plan and the time that you ceased working on
13 the plan.

14 My question is, in those subsequent
15 discussions between mid-February and I guess the first
16 of April or so, 1991 -- the subsequent discussions
17 that you had during that period with cable operators,
18 did you come away with greater optimism or lesser
19 optimism or no change in your optimism, based upon the
20 very preliminary discussions you had with cable
21 operators on the subject of their willingness to
22 carry --

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1 A I can't agree with you that I would have
2 had those meetings only after February 15 or whatever
3 date that was. I don't recall precisely when I had
4 those discussions. But in general, cable operators
5 were giving me positive responses in terms of the
6 concept.

7 Their concern was channel capacity. We
8 had -- we had a solution to that problem where people
9 had a problem with channel capacity. Some did, some
10 didn't. Some were going to expand. Some might be
11 able to carry us immediately. Some might be able to
12 carry us at some future date. Those were preliminary
13 discussions. We did not have specific information
14 from any of them. They were -- it's a general topic
15 of discussion one has when you start talking about
16 adding a channel to any cable system, and you look for
17 ways to help them solve their problem if they have
18 one.

19 Q You say you had a solution for the cable
20 operators to their channel capacity problem. What was
21 your contemplated solution?

22 A The concept was to -- for those operators

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1 who carried a movie channel -- and -- and I do not
2 recall if all of them did, but certainly, many of them
3 did in this case. Excuse me. Our solution was to
4 allow them to replace that movie channel at their
5 earliest convenience, with a movie channel that we
6 would create for them which would reduce our operating
7 expense and be an incentive for them to accept our
8 programming as opposed to that which they were paying
9 for.

10 Q And how did you propose to finance that?
11 I assume that you would then have had to acquire the
12 programming, the movie programming, that would replace
13 the movie programming that the cable operators would
14 carry.

15 A It -- it would have been purchased through
16 advertising sales, principally.

17 Q Was it your concept to acquire from the
18 same programming sources that the cable companies were
19 acquiring it from?

20 A Yes. We're generally speaking about films
21 that are fairly old. They do not -- they're not --
22 they do not cost a premium price. They are fairly

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1 inexpensive as -- as movie carriage goes.
2 Consequently, the cost of programming was not an
3 insurmountable problem.

4 Q So, your concept was that you would
5 relieve the cable operators of that cost by --

6 A No. I would relieve the cable subscribers
7 of their monthly fee they paid to the programmer from
8 which they were currently receiving programming.

9 Q I see. You would subsidize that charge.
10 In other words --

11 A I would eliminate it.

12 Q Now you've lost me. This is my fault, I'm
13 sure.

14 A cable operator has a contract with a
15 programming source to acquire movies, and that's what
16 the cable company is now showing. Your concept was
17 that the cable operator would continue to get the
18 programs from that same source, but that you would pay
19 for it rather than the cable operator pay for it?

20 A No. He would no longer need to carry that
21 service. We would replace it.

22 Q You would replace it with the same

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1 programming?

2 A With a program package that we would
3 develop, which would have a similar type of movie
4 content.

5 Q Okay. Turn over one page on your document
6 to 75185. This is a document that has a typewritten
7 date of March 26, 1981 on the third --

8 MR. COHEN: '91, 1991.

9 MR. EMMONS: 1991. Thank you, Mr. Cohen.

10 MR. COHEN: Time goes fast when you're
11 having fun.

12 MR. EMMONS: Yes, it does.

13 Letterhead of Alternatives Virginia. Take
14 a moment to look at that document, if you would, Mr.
15 Etsell.

16 My first question to you is, have you ever
17 seen this document before?

18 THE WITNESS: I do not recall seeing this
19 document previously.

20 BY MR. EMMONS:

21 Q Did you become aware at some point that
22 Raystay company entered into an agreement with Mr.

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1 Fenstermacher?

2 A Yes.

3 Q Were you aware, generally, of what that
4 agreement provided for?

5 A No, I don't think I ever knew the
6 specifics of their agreement.

7 Q Okay. Did anybody from Raystay consult
8 with you or ask your advice about whether or not you
9 felt Raystay should enter into an agreement with Mr.
10 Fenstermacher about the low power operation? And put
11 aside the documents we were looking at a minute ago
12 where Mr. Gardner had asked you for your advice on
13 that. I'm talking now about --

14 A Subsequent to this letter date, I do not
15 recall such a conversation.

16 Q So, as far as you recall, you weren't
17 asked and you did not give your views, if you had any
18 views even, on the subject of whether it was a good
19 idea or not a good idea for Raystay to enter into an
20 agreement with Mr. Fenstermacher?

21 A I do not recall such a conversation.

22 Q Now, were you aware that the agreement

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1 with Mr. Fenstermacher generally provided that Mr.
2 Fenstermacher would provide the programming at least
3 at the time when the low power stations and provide
4 the programming, and that he had an option to buy the
5 old stations after a period of time?

6 MR. COHEN: You were aware when? You
7 mean, when it was --

8 BY MR. EMMONS:

9 Q Roughly had come contemporaneously --
10 1991.

11 A In the year of 1991?

12 Q Right.

13 A I believe that prior to the end of that
14 year, at some time I was aware of that, yes.

15 Q Did you hear the ultimate result of these
16 dealings with Mr. Fenstermacher?

17 A I'm aware that things did not work out.

18 Q When did you become aware of that?

19 A I do not recall. I believe after -- the
20 only thing I can state is, is that I became aware of
21 it, as I recall, after the situation developed and I
22 think we had -- were back, operating the station

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1 again.

2 Q Channel 40?

3 A Channel 40.

4 Q Now, to your knowledge, after Raystay
5 entered into the arrangement, the agreement with Mr.
6 Fenstermacher, at any time after that, did Raystay
7 take steps to implement the low power television
8 business plan that you had been developing?

9 A I am not aware of any actions. My
10 involvement at that time was -- subsequent to the
11 first quarter, which is the area we're speaking about,
12 was almost exclusively related to the GH Cable
13 operations.

14 Q Did George Gardner hold meetings, staff
15 management meetings, typically?

16 A At this time, we did not have any regular
17 meetings scheduled.

18 Q When you heard what was going on in the
19 company -- and you've testified that you heard, for
20 example, that an agreement was signed with Mr.
21 Fenstermacher. And that at some point, you heard that
22 it didn't work out with Mr. Fenstermacher and so

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1 forth. When you heard those things, in what setting
2 did you hear those? Were those at meetings where
3 projects were being discussed? Were they casual
4 conversations? Do you recall?

5 A I don't recall the specific circumstances
6 under which I learned anything.

7 MR. COHEN: Could we go off the record one
8 second?

9 (Whereupon, off the record at 3:03 p.m.,
10 until 3:08 p.m.)

11 BY MR. EMMONS:

12 Q Mr. Etsell, was there a time that you
13 became aware that Raystay company was looking for
14 buyers for the low power television construction
15 permits?

16 A I was aware that offers were -- were made.
17 I'm not -- I don't know that I was aware at this time
18 of us seeking a buyer.

19 Q Did you become aware at any time of
20 Raystay seeking a buyer?

21 A I don't recall a conversation I was
22 involved in where we were discussing seeking buyers.

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1 Q When was that conversation?

2 A I said I don't recall such a conversation.

3 Q Oh, I'm sorry. I see. Okay.

4 Were you aware at any time that people at
5 Raystay were negotiating with perspective buyers,
6 apart from Mr. Fenstermacher which we've discussed
7 already?

8 A Yes.

9 Q What were you aware of in that connection?

10 A There was a discussion with Flight Systems
11 at one point in time. I don't recall specifically
12 when.

13 Q Do you recall any other discussions on
14 negotiations with perspective buyers?

15 A I believe Trinity Broadcasting at one
16 point was interested in buying one or more of the
17 construction permits.

18 Q Do you know anything about any of the
19 negotiations of Trinity?

20 A No.

21 Q Are you aware of any other buyers with
22 whom Raystay was talking, perspective buyers?

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1 A I don't recall any.

2 Q Do you remember having any discussion with
3 George Gardner about the possibility of selling the
4 low power construction permits?

5 A Other than I believe that we had always
6 looked at our options as that being an option to
7 consider at any point in time, no.

8 Q Do you have a recollection of George
9 Gardner discussing that selling the permits was always
10 an option?

11 A The discussions I recall having with
12 George Gardner were that we wanted to retain the
13 licenses and that leasing was a better option than
14 selling, but that selling was an option.

15 Q Did George Gardner, to your knowledge,
16 ever instruct others in the company or encourage
17 others in the company to find perspective buyers?

18 A I don't recall being a party to that
19 conversation.

20 Q My last question was whether you were
21 aware of any instructions or encouragement given by
22 George Gardner to people in the company to find

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1 perspective buyers. And your answer, if I recall it,
2 was that you were not a party to any such
3 conversation. Whether or not you were a party to such
4 a conversation, did you ever hear about such a --

5 A Soliciting buyers, no.

6 Q Yes, okay.

7 Now, did you become aware at any time that
8 the construction permit for the Red Lion station was
9 sold by Raystay?

10 A I've heard that recently.

11 Q When you say recently, you mean in the
12 last few weeks?

13 A In the last 24 hours.

14 Q All right. And that's the first time
15 you've heard of it?

16 A Yes.

17 Q So, I take it it's fair to say that when
18 that happened, you were not consulted about it?

19 A That's correct.

20 MR. COHEN: I'll stipulate to that.

21 BY MR. EMMONS:

22 Q All right.

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1 And I take it you were not consulted for
2 your views with respect to the possibility or the
3 prospect of selling the construction permits to
4 Trinity Broadcasting?

5 A No.

6 Q With respect to David Gardner, did you
7 ever have any discussion or discussions with David
8 Gardner on the subject of how to make low power
9 stations economically viable?

10 A Well, David Gardner and I from time-to-
11 time discussed the operations of TV 40, and certainly,
12 he was aware of the programming concept, as I said
13 earlier, as I continued to have discussions with him
14 on that subject as I pursued it. But other than that,
15 I would say no.

16 Q When this transition was made in the first
17 quarter of 1991, did you thereafter, have any
18 responsibilities that related to TV 40?

19 A No, I don't recall having any
20 responsibilities to TV 40, thereafter.

21 Q And so, when you testified a moment ago
22 that you had discussions with David Gardner about the

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